

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Second Appeal no. 5 of 2006

Mr.Prakash Tukaram Indulkar ..Appellant

vs.

1. Mrs.Nalini Mahadev Kadam
and others ..Respondents

Shri Harihar Bhave i/b Bhave and company for appellant.
Shri A.S.Khandeparkar for respondent nos.1, 2 and 3.

CORAM: S.C.DHARMADHIKARI J.
1st August, 2007

P.C.

1. Heard Shri Bhave appearing for the appellant/original plaintiff and Shri Khandeparkar appearing for respondent nos.1,2 and 3/original defendant nos. 1 to 3.
2. The appellant is aggrieved by dismissal of the appeal on 1st October, 2005 by Additional District Judge, Khed.
3. That judgment affirms the Trial Court decree of dismissal of Reg.Civil Suit No.42 of 1992 filed in the Court of Civil Judge, Jr.Dn., Chiplun.
4. Shri Bhave, learned Counsel appearing for the appellant/original plaintiff submits that dismissal of the suit is only on the ground that the suit land may not be referred to in the compromise purshis or the decree passed

in Reg.Civil Suit No.63 of 1960 but undue advantage thereof cannot be taken by the Appellant/plaintiff but this approach is improper in law. The lower Appellate Court as well as the Trial Court has heavily relied upon the compromise purshis (Exh.71) filed in Reg.Civil Suit No.63 of 1960 and especially the recitals therein. However, it overlooked the order therein and the effect that the suit property is not included in the same.

5. The courts below have perused the compromise terms and the record of the earlier suit. Based upon, this the Courts below concluded that there is no joint family of Gopal Laxman and the plaintiff's grand father Ganpat. Land bearing survey no.54 Hissa No.20-B came to the share of the appellant/original plaintiff and his mother. Had there been no separation of survey no.54 and its division into Hissa No.20-A and 20B there was no propriety in allotting one Hissa to the exclusive ownership of the plaintiff and his mother.

6. The reasoning of the Trial Court as well as lower Appellate Court in paras 19 and 23 is based upon and consistent with the oral and documentary evidence on record.

7. It is in such circumstances that I am of the opinion that no substantial question of law arises in the present

second appeal.

8. Reliance by Shri Bhawe on the decision of the Hon'ble Supreme Court reported in A.I.R.1995 S.C.995 (N.Jayalakshmi Ammal and another Vs. R.Gopala Pathar and another) is misplaced because there the Hon'ble Supreme Court made observations in the light of the factual position whereas in the present case, the Courts below have disbelieved the version of the appellant/original plaintiff with regard to the suit land being a joint property. The suit land has not only come to the share of the plaintiff and his mother but based upon exclusive possession and share, the same has been alienated as well. If the authorisation in terms of the compromise decree was not there it was inconceivable that land could be alienated. In such circumstances, I find no merit in this appeal. The appeal is summarily dismissed.

(S.C.DHARMADHIKARI J.)